

Conference article

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Piercing and tattoos in adolescents: legal and medico-legal implications

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Abstract: Non-therapeutic body modification interventions are permitted within the limits of the use of one's own body that can be specified in the legal system. The authors take into consideration Italian regulation on tattooing and piercing, in particular in relation to adolescents. Results. In Italy, several regions have therefore issued acts aimed at regulating the activities of tattoo and piercing also in reference to minors. Discussion. With regard to minors, the rules taken into account set precise limits in relation to the age criterion and subordinate the implementation of such practices to the provision of consent by legal representatives. Conclusion. If such practices are of an aesthetic nature, we cannot avoid considering the implications they have on health protection, and then adopt appropriate measures to protect the person who intends to undergo them, particularly in the case of minors.

Keywords: Piercing; Tattoos; Information; Adolescents;

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1 Introduction

The practice of body modification represents a place of identification/separation and communication/exchange between the intimate and very personal sphere of the individual and the collective and social dimension, and has always conveyed a complex weave of motivations, desires and deep meanings [1].

Tattoos can be defined as the permanent colouring of body parts obtained through the subcutaneous and intradermal introduction or penetration of pigments using needles or via scarification in order to form indelible and permanent designs or figures, while piercing means the perforation of any part of the human body with the purpose of inserting rings or other ornaments of different forms and kinds [2].

Such practices have changed their status from the eccentric and minority choice of some socially or culturally definable individuals to actual generational consumer items with strong appeal on a large number of teenagers, regardless of social, economic and cultural class [3].

The practices in question therefore continue to be the representation of a possible personal expression capable of highlighting not only parts of oneself that may not be expressed otherwise in such an immediate way, but also the very concept of self, which, at this particular age, begins to form in terms of physicality and of the mediation this has with personal experiences [4].

At present, there are no regulations within the Italian legal system in terms of ordinary national legislation for the practices in question.

Piercing and tattoo techniques cannot be considered healthy activities, as they do not even get near pursuing or preserving the health of the subject requesting them nor are they cosmetic surgery which still tends to protect the health of the patient, even if only in the broadest sense of the concept of health currently acknowledged. Tattooing and piercing can therefore be considered as purely aesthetic treatments or body decoration techniques [5]. These are acts of use of one's own body that may however have

an effect on one's physical integrity, even with possible consequences in terms of health preservation [6]. In fact, it is difficult to establish a clear boundary between aesthetic and health activities, given that even limiting the former to the superficial layers of the skin and to the use of non-drug products and non-medical or non-surgical equipment, it is undeniable that the effects may impact not only the aesthetic aspect, but also actual health conditions [7].

After all, tattoos and body piercing are performed through invasive and modificatory operations to the body with the risk of exposing the subjects who undergo these treatments to unintended harmful consequences on their mental and physical integrity.

The authors take into consideration Italian regulation on tattooing and piercing, in particular in relation to adolescents.

2 Results

2.1 Tattooing and piercing: Italian regulation

On the national level, the need of regulations for tattooing and piercing resulted in the enactment of the Circular of the Ministry of Health of 5 February 1998 containing the "Guidelines for the performing of safe tattooing and piercing procedures" and of the Circular of 16 July 1998 containing "Clarifications provided by the Board of Health Council relating to Circular no. 9/156 of 5 February 1998"; the Ministry forwarded the issue of allowing minors to access such practices to a subsequent legislative action, stating that in order to limit piercing and tattoo procedures in relation to the age of the subject, it will be necessary to resort to legislative measures.

As the above guidelines underline, the procedures that involve the use of needles and blades for non-therapeutic purposes can result in risk of infections caused by blood-borne pathogens, as well as skin infection, even serious, if the necessary preventive hygiene measures are not strictly observed. In rare cases, these procedures have even caused serious systemic infections. There are numerous cases in medical literature involving infections transmitted after piercing and tattoos. The latter procedure is also associated with toxic effects caused by substances used for the pigmentation of the skin.

Non-therapeutic body modification interventions are permitted within the limits of the use of one's own body that can be specified in the legal system and, in particular, in relation to art. 5 of the (Italian) Civil Code (Acts of use of

one's own body), which states that the acts of use of one's own body are prohibited when such use would cause a permanent decrease of physical integrity, or are otherwise contrary to law, public order and morality.

Tattoo and piercing practices, in addition to the hygienic and sanitary limits posed by regulatory provisions, are therefore not fully available to the will of the parties, which is why regional legislation also prohibits the use of such practices in anatomic areas which can give rise to crippling consequences or on body parts where the scarring process would be particularly difficult.

If the intervention may be considered as an act of use resulting in a permanent decrease of physical integrity (e.g. tattoo extended to almost the entire body, piercing in areas particularly hazardous to the health of the subject, etc.), the act will fall within the prohibitions laid down in art. 5 of the (Italian) Civil Code [5].

Regulations issued at the regional level mainly confirm the need to deal with the evolution and spread of the aesthetic practices in question. In terms of health protection through careful regulation of its activities, the fact that tattoo and piercing practices are a steadily growing phenomenon, especially among adolescents, is taken into account. In addition, the incorrect practice of these activities – which are performed on another's body through modificatory and invasive procedures – involves the exposure of individuals undergoing such procedures to possible unintended harmful consequences on their physical and mental integrity. Therefore, the purpose of regulations is to specify, in a light of principles that can be found in legislation, the limits concerning the use of one's own body and therefore the limits of allowable risk (with particular reference to minors), and to identify the interventions that may be considered dangerous to one's health by causing a decrease in mental and physical integrity of the subject [8].

Another essential requirement is the consent of the person concerned, subject to adequate information regarding the conditions of the operation, the possible risks associated with such practices, the precautions to be taken after receiving a tattoo or piercing and the eventual subsequent removal of the same. Consent of the person concerned is essential for the operator to intervene on his/her body [9]. However, this consent may never be valid to authorise an activity contrary to Art. 5 (Italian) of the Civil Code or not performed in accordance with the highest of standards.

In the light of above mentioned, the information process is then essential [10-12]. Any person wishing to undergo a tattoo or piercing procedures should be exhaustively informed (including through written notice) about

the process of said procedures. The following information regarding a type of operation to be carried out, the materials, products to be used, and any contraindications and precautions, as well as possible risks and early and late side effects to be observed after completion of the treatment should be provided. The procedures and limits of a possible future removal of the effects of a tattoo or piercing should also be given. Thus, the operator will have to collect the information necessary to perform a tattoo or piercing under safe conditions (e.g. any skin diseases, coagulation disorders, diseases that may easily lead to infection, etc.). The Council of Europe Resolution of 20 February 2008, regarding the safety requirements and criteria to apply in tattoos and permanent makeup, states the operator's duty to provide the person concerned with comprehensive and understandable information.

A piercing or tattoo should be performed after obtaining the subject's consent concerning the specific treatment, by having him or her sign a form certifying his or her awareness regarding the aforementioned information as well as his or her willingness to undergo a tattoo or piercing intervention.

A definition of such practice is found in Art. 79 paragraph 2 of Tuscany Regional Council President Decree no. 47/R of 2 October 2007 ("Implementing regulation of Regional Law No. 28 of 31 May 2004, "Regulation of aesthetic and tattoos and piercing activities"), as amended by Regional Council President Decree no. 44/R of 6 August 2008: For the purposes of this regulation, informed consent shall be intended as the will freely expressed by the adult applicant or by the parent or guardian, in the ways established by said regulation, concerning: a) authorisation for treatments; b) acknowledgment of the risks involved in performing such interventions and the precautions to take after completion of treatment.

2.2 Tattooing and piercing in adolescents

Parental authority and decision-making is therefore legally enforced also when it comes to dealing with a minor's request to receive a tattoo or piercing.

If the person who requests a tattoo or piercing is a minor, parental consent based on the provision of exhaustive information regarding the aforementioned aspects is indispensable. Furthermore, parental involvement appears to be necessary also to acquire information for the safe application of a tattoo or piercing to the minor [13].

Obtaining informed consent also in the case of cosmetic surgery should be structured on authorization by both parents [14].

Legal regulation of piercing and tattooing activities needs to give a priority to the protection of minors as they are legally incompetent and their personality is not fully formed.

They must be adequately informed of the procedure, risks and precautions to be taken after the process of tattooing or piercing and any subsequent removal of the tattoos.

In particular, Art. 80 (Verifications) of the aforementioned Tuscany Regional Council President Decree establishes that unless adult age is obvious, the operator shall ascertain the age of the applicant by demanding the submission of a document attesting identity. The operator shall not carry out the assessment referred to in paragraph 1 when an adult accompanying the minor provides an identity document as signs the informed consent forms as parent or guardian.

Regional regulations therefore require informed consent to be provided personally by a parent or guardian; moreover, some regions have provided for exceptions to these regulations, such as earlobe piercing requested by minors between 14 and 18 years of age (e.g. Tuscany Region, Regional Law no. 28 of 31 May 2004, – Emilia Romagna Region, Regional Council Decree no. 465 of 11 April 2007), as these practices are considered low health risk, as well as further restrictions, such as the prohibition to carry out tattoos and piercings – with the exception of ear-piercing with parent or guardian consent – on minors under fourteen years of age (e.g. Tuscany Region, Regional Law no. 28 of 31 May 2004, – Piedmont Region, Regional Bill no. 25 submitted on 22 June 2010) or under eighteen years of age (e.g. Sicily Region, Regional Health Decree of 31 July 2003 containing the "Guidelines on tattoos and piercings").

Consent granted by parents or guardians will be obviously valid when added to the will of the minor and while respecting the limits identified for adult subjects, where legal requirements are met and there are no contraindications to performing the tattoo or piercing.

As regional regulations also show, ear-piercing takes on a standalone regulatory relevance; this appears to be evident in Annex A – Appendix to the Veneto Regional Council Decree no. 2401 of 14 October 2010 containing "Provisions for the execution of the perforation of the earlobe", which establishes that before piercing, the customer must sign the informed consent and intervention registration form. In the case of minors under the age of 18, consent of whoever exercises parental authority will be required. In addition to the information to be released to the customer, the form should contain warnings regard-

ing the importance of careful and assiduous hygiene of the treated area in the days following the piercing.

Other regions acknowledge the independent will of minors starting from 14 years of age with respect to this practice, as these practices are considered low health risk given the limited vascularisation of this anatomical area.

In more recent times, the Veneto Regional Council Decree no. 11 of 9 January 2013, Annex A, specifies the need to provide adequate information to the customer signing the informed consent form (the parent or guardian for minors).

In particular, we should reflect on the appropriateness of subjecting younger children to earlobe piercing, and on the need to involve minors – depending on age and maturity level – in such choice lest they become passive recipients of a desire by the parents [15].

The violation of prohibitions and limits laid down in the Law of the Tuscany Region and in the Bill of the Piedmont Region, in relation to both adults and minors, is punishable with administrative fines, and in some cases with a suspension of the business licence for a set period of time.

The aforementioned standards reveal the need to take into consideration a diversity of cases that fall within “minor age”; in particular, against conceiving minors as an abstract and undifferentiated category, it is necessary to distinguish between child and adolescent, especially when it comes to adolescents whose growth and formative process is at a particularly advanced stage and near “maturity” [5].

In regard to performing tattoos on minors without prior parent or guardian authorisation, the Supreme Court [16] rejected an appeal lodged by the defendant against the ruling that judged the operator responsible for the crime of simple voluntary wounding by performing a permanent tattoo on the body of a minor without the valid consent of a parent or guardian. In this case, the trial judges found that there was no reason to doubt the operator had been made aware of the lack of preventive consent by the minor’s parent or guardian. Furthermore, the aforementioned criminal offense charge depended on the outcome of the completed medical report (legal findings) demonstrating that the tattoo had produced an alteration of the protective function of the skin, resulting in the need for a therapeutic elimination intervention, albeit of moderate consistency.

3 Discussion

Although the parent or guardian – while taking into account the tendency to acknowledge the minor’s gradual independence that comes from age and psychophysical maturity and his or her independent decision-making as legally established in some cases – is legally responsible for the minor as far as his or her medical treatment, protection and best interest, doctors, who work for the protection of life and the physical and mental health as set forth in the Code of Medical Ethics, must commit to the protection of fragile subjects and notify the competent judicial authority (art. 32) when the legal parent or guardian fails to take care of the minor.

On the other hand, the possibility to remove tattoos thanks to new dermatological surgery technologies attenuated the concept of “indelibility”, a term rather widespread among the population till now, thus contributing to a further increase in this practice [17].

It therefore appears essential that the minor and parents should be made aware of the features, risks and limits of the available tattoo removal procedures.

Moreover, if tattooing and piercing are in some cases the result of impulsive choices, often linked to following a trend or to the pressure to conform to a peer group, information and awareness campaigns, including through public health channels, take on an important role, health education programmes should be conveyed by general practitioners and educators in schools to prevent the impulsive application of tattoos [4].

Even with the lack of a specific uniform regulatory framework, tattoo and piercing practices are acts of use of one’s own body not fully available to the will of the parties and subject to the limits found in the legal system intended for the protection of physical integrity and health.

With regard to minors, the rules taken into account set precise limits in relation to the age criterion and subordinate the implementation of such practices to the provision of consent by legal representatives, with additional special provisions for earlobe piercing.

4 Conclusion

If indeed such practices are of an aesthetic nature, we cannot avoid considering the implications they have on health protection, as they affect the person’s physical integrity and therefore must involve appropriate measures to protect the person who intends to undergo them, particularly in the case of minors, so as to ensure adequate

information and promotion of awareness for the person concerned (and for the parent or guardian).

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